



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

November 15, 2000

Mr. W. Thomas Godard
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-4423

Dear Mr. Godard:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141292.

The Texas Department of Health (the "department") received a request for information submitted to the department since January 1, 1999, by or on behalf of Intercontinental Energy Corporation ("IEC"), relating to certain uranium mines in Live Oak County. You have submitted the requested information to this office. Pursuant to section 552.305 of the Government Code, you notified IEC of the request for information and of IEC's right to submit comments to this office as to why the requested information should not be released. The department takes no position as to whether any of the information in question is excepted from public disclosure. This office has received no correspondence from IEC. We have reviewed the information you submitted and the comments which the requestor submitted to this office.

Section 552.110 of the Government Code protects the proprietary interests of private parties that submit information to governmental bodies by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b); Open Records Decision No. 552 at 2 (1990). Section 552.305 of the Government Code provides that if a private party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good-faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3 (1990). Upon receipt of notice under section 552.305(d), IEC had ten business days in which to

submit to this office its arguments, if any, as to why the requested information is protected from disclosure under section 552.110. *See* Gov't Code § 552.305(d)(2)(B). As IEC submitted no comments to this office, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

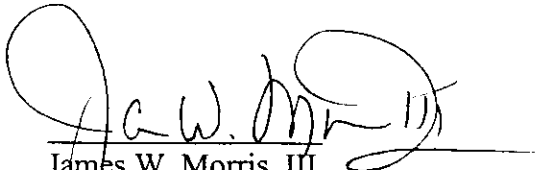
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 141292

Encl: Submitted documents

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